

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 576

SPONSOR: Senators Fasano

SUBJECT: The Seniors' Safety Act

DATE: January 15, 2004

REVISED: 02/04/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 576, which the bill states may be cited as “The Seniors’ Safety Act,” creates s. 775.0847, F.S., which provides for the reclassification of any third degree felony offense, second degree felony offense, or first degree felony offense (not punishable by life imprisonment) whenever a person is charged with committing such offense upon a person 65 years of age or older or an elderly person or disabled adult as defined in ch. 825, F.S., regardless of whether he or she knows or has reason to know the age, infirmity, or disability of the victim.

The bill amends s. 784.08, F.S. (reclassification of assault or battery offenses where the victim is a person 65 years of age or older), and s. 812.0145, F.S. (reclassification of theft offenses where the victim is 65 years of age or older), to delete current provisions providing for the reclassification of felony offenses because s. 775.0847, F.S., covers those felony reclassifications. The bill also amends s. 812.0145, F.S., to provide that, notwithstanding any other provision of law, if the funds, assets, or property involved in a theft from a person 65 years of age or older is valued at \$10,000 or more, the court must sentence the offender to a minimum mandatory sentence of 3-years imprisonment. The amendment of s. 812.0145, F.S., also includes an exemption from such sentencing for auto theft and language pertaining to the imposition or construction of the minimum mandatory term in relation to other laws.

Finally, the bill amends s. 825.103, F.S. (exploitation of an elderly person or disabled adult), in the same manner as the amendment of s. 812.0145, F.S., except that the 3-year minimum mandatory sentence applies to exploitation, not theft.

This bill substantially amends ss. 784.08, 812.0145, and 825.103, F.S., and creates s. 775.0847, F.S.

II. Present Situation:

Reclassification of felony and misdemeanor assaults and batteries when the victim is 65 years of age or older (s. 784.08, F.S.)

Subsection (1) of s. 784.08(1), F.S., provides that a person who is convicted of an aggravated assault or aggravated battery upon a person 65 years of age or older shall be sentenced to a minimum mandatory term of imprisonment of 3 years and fined not more than \$10,000 and shall also be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work are in addition to any fine or sentence which may be imposed and not in lieu of a fine or sentence.

Subsection (2) of s. 784.08, F.S., provides that whenever a person is charged with committing an assault, aggravated assault, battery, or aggravated battery upon a person 65 years of age or older, regardless of whether he or she knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:

- In the case of aggravated battery, from a second degree felony to a first degree felony.
- In the case of aggravated assault, from a third degree felony to a second degree felony.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.

Notwithstanding the provisions of s. 948.01, F.S. (conditions for placement of a defendant on probation or community control), adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Reclassification of theft offenses when the victim is 65 years of age or older (s. 812.0145, F.S.)

Subsection (1) of s. 812.0145(1), F.S., provides that a person who is convicted of theft of more than \$1,000 from a person 65 years of age or older shall be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work are in addition to any fine or sentence which may be imposed and not in lieu of a fine or sentence.

Subsection (2) of s. 812.0145, F.S., provides that whenever a person is charged with committing a theft from a person 65 years of age or older, when he or she knows or has reason to believe that the victim was 65 years of age or older, the offense for which the person is charged shall be reclassified as follows:

- If the funds, assets, or property involved in the theft is valued at \$50,000 or more, the offender commits a first degree felony.
- If the funds, assets, or property involved in the theft is valued at \$10,000 or more, but less than \$50,000, the offender commits a second degree felony.
- If the funds, assets, or property involved in the theft is valued at \$300 or more, but less than \$10,000, the offender commits a third degree felony.

Definitions of “disabled adult” and “elderly person” (s. 825.101, F.S.)

Subsection (4) of s. 825.101, F.S. (the definitions section of ch. 825, F.S., relating to abuse and neglect of the elderly and disabled adults), defines “disabled adult” as “a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.”

Subsection (5) of s. 825.101, F.S., defines “elderly person” as “a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.”

Exploitation of an elderly person or disabled adult (s. 825.103, F.S.)

Subsection (1) of s. 825.103, F.S., defines “exploitation of an elderly person or disabled adult” as “[k]nowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who: ... stands in a position of trust and confidence with the elderly person or disabled adult; or ... has a business relationship with the elderly person or disabled adult.”

This subsection also defines “exploitation of an elderly person or disabled adult” as “[o]btaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.”

Subsection (2) of s. 825.103, F.S., provides for the following penalties for exploitation of an elderly person or disabled adult:

- If the funds, assets, or property involved is valued at \$100,000 or more, the offender commits a first degree felony.
- If the funds, assets, or property involved is valued at \$20,000 or more, but less than \$100,000, the offender commits a second degree felony.
- If the funds, assets, or property involved is valued at less than \$20,000, the offender commits a third degree felony.

III. Effect of Proposed Changes:

Provided is a section-by-section analysis of SB 576:

Section 1 of the bill states that this act may be cited as “The Seniors’ Safety Act.”

Section 2 of the bill creates s. 775.0847, F.S., which provides for the reclassification of any third degree felony offense, second degree felony offense, or first degree felony offense (not punishable by life imprisonment) whenever a person is charged with committing such offense upon a person 65 years of age or older or an elderly person or disabled adult as defined in ch. 825, F.S., regardless of whether he or she knows or has reason to know the age, infirmity, or disability of the victim.

The new section reclassifies the felony degree of such offenses as follows:

- In the case of a third degree felony, the offense is reclassified to a second degree felony.
- In the case of a second degree felony, the offense is reclassified to a first degree felony.
- In the case of a first degree felony, the offense is reclassified to a first degree felony, punishable by life imprisonment.

The reclassification of the felony degree of the offenses may result in a greater punishment for some felony theft offenses than provided under current s. 812.0145, F.S. Two examples illustrate the differences. If a person stole property valued at \$101,000 from a 65 year-old person, this would be a first degree felony under s. 812.014, F.S. However, current s. 812.0145, F.S., does not provide for a reclassification resulting in a greater punishment than provided under s. 812.014, F.S. Under the new s. 775.0847, F.S., the first degree felony is reclassified as a first degree felony, punishable by life imprisonment (in contrast to a term of imprisonment not exceeding 30 years, which is the punishment for a first degree felony under s. 775.082, F.S., unless another statute provides for a term of imprisonment for life or imprisonment for a term of years not exceeding life imprisonment).

If a person stole property valued at \$20,000 from a 65 year-old person, this would be a second degree felony under s. 812.014, F.S. However, again, current s. 812.0145, F.S., does not provide for a reclassification resulting in a greater punishment than that provided under s. 812.014, F.S.

Section 812.0145, F.S., contains anomalies like the related examples because reclassifications are based on property value rather than felony degree of offense, which is the typical felony reclassification. Property value is already accounted for in s. 812.014, F.S., in determining the felony degree of various theft offenses. For example, theft of \$20,000 of property is a second degree felony because theft of property valued at \$20,000 or more, but less than \$100,000, is a second degree felony. Section 812.0145, F.S., also contains property value ranges, but these ranges do not accord with the property value ranges in s. 812.014, F.S. The bill eliminates these anomalies by creating a traditional felony reclassification that will cover felony theft and other felony offenses committed against a person 65 years of age or older or an elderly person or disabled adult.

In regard to s. 784.08, F.S., there is no difference between the felony reclassification in that statute and the new s. 775.0847, F.S. Section 784.08, F.S., reclassifies aggravated assault and aggravated battery by one felony degree, which is also the reclassification under the new s. 775.0847, F.S.

Section 784.0847, F.S., departs from the “traditional” in two significant ways. First, felony reclassifications that currently apply to theft and assault or battery offenses when the victim is a person 65 years of age or older will now also apply to an “elderly person,” as defined in s. 825.101(5), F.S., which includes any person 60 years of age or older who meets that definition, and to a “disabled adult,” as defined in s. 825.101(4), F.S., which includes any person 18 years of age or older who meets that definition.

Second, the felony reclassification applies to all felony offenses, not to the handful of felony offenses covered under current felony reclassifications, and this expanded felony reclassification applies to an expanded list of victims: any person 65 years of age or older or an elderly person or disabled adult as defined in ch. 825, F.S.

The reclassification provision applies regardless of whether the person committing the felony knows or has reason to know the age, infirmity, or disability of the victim. Under s. 784.08, F.S., the reclassification applies regardless of whether the person committing the offense knows or has reason to know the age of the victim. In contrast, the reclassification provision in s. 812.0145, F.S., only applies if the offender knows or has reason to believe that the victim was 65 years of age or older.

Section 3 of the bill amends s. 784.08, F.S. (reclassification of assault or battery offenses where the victim is a person 65 years of age or older), and s. 812.0145, F.S. (reclassification of theft offenses where the victim is 65 years of age or older), to delete current provisions providing for the reclassification of felony offenses because s. 775.0847, F.S., covers those felony reclassifications.

Section 4 of the bill amends s. 812.0145, F.S., to provide that, notwithstanding any other provision of law, if the funds, assets, or property involved in a theft from a person 65 years of age or older is valued at \$10,000 or more, the court must sentence the offender to a minimum mandatory sentence of 3-years imprisonment.

The amendment of s. 812.0145, F.S., also includes an exemption from such sentencing for auto theft and language pertaining to the imposition or construction of the minimum mandatory term in relation to other laws. The bill indicates that the new minimum mandatory term does not prevent the court from imposing a greater sentence of incarceration as authorized by law. If the minimum mandatory term exceeds the maximum sentence authorized by s. 775.082, F.S., s. 775.083, F.S., or s 775.084, F.S., or the Criminal Punishment Code, the minimum mandatory sentence must be imposed. If the sentence that could be imposed under any of the referenced sections or the Code exceeds the minimum mandatory term, the sentence imposed must include the minimum mandatory term.

Unlike the provisions of s. 775.0847, F.S., which is created by Section 2 of the bill, this section only applies to persons 65 years of age or older.

Section 5 of the bill amends s. 825.103, F.S. (exploitation of an elderly person or disabled adult), to provide that, notwithstanding any other provision of law, if the funds, assets, or property involved in the exploitation of an elderly person or a disabled adult is valued at \$10,000 or more, the court must sentence the offender to a mandatory minimum sentence of 3 years imprisonment. Auto theft is exempted from such sentencing. The amendment also includes language pertaining to the imposition or construction of the mandatory minimum term in relation to other laws (identical to the language provided in the amendment of s. 812.0145, F.S.).

Unlike the provisions of s. 775.0847, F.S., which is created by Section 2 of the bill, this section only applies to an elderly person or disabled adult, as defined in ch. 825, F.S.

Section 6 of the bill provides for an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Senate Bill 576 has not yet been reviewed by the Criminal Justice Impact Conference (CJIC). Department of Corrections' staff indicates there is a potential impact to the prison population as a result of the mandatory minimum sentencing provisions of the bill, but that impact will be determined by the CJIC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Amends the title of s. 812.0145, F.S., which is amended by the bill to reflect changes to the text of the statute made by the bill.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
